

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Willie Joe Sturkey,) Civil Action No. 8:10-cv-1479-RMG
)
 Plaintiff,)
)
 vs.) **ORDER**
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Ms. Hudson, et. al.,)
)
)
 Defendants.)
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Plaintiff filed this *pro se* 1983 action alleging that Defendants violated his civil rights in connection with his current confinement. Specifically, Plaintiff complains that his confinement in a cell with another inmate violates certain nation prison accreditation standards. Plaintiff is an inmate at the Allendale Correctional Institution. The Magistrate recommended dismissing Plaintiff's claims. (Dkt. No. 69). Plaintiff has not objected to the R&R. As shown herein, this Court has reviewed the Record for any errors of law and agrees with the Magistrate's report and adopts it as the order of this Court.

Law/Analysis

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

As addressed in the R&R, there are legal barriers to Plaintiff's claims. First, Plaintiff has failed to exhaust his administrative remedies. *See Moore v. Bennette*, 517 F.3d 717, 725 (4th Cir. 2008); 42 U.S.C. § 1997e(a). Second, Plaintiff's claim fails on the merits. The recommendations from a group like the American Correctional Association do not establish the Constitutional ceiling or floor and are merely instructive. *See Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 391 n. 13 (1991) (noting that recommendations from groups are helpful but do not set the Constitutional limitations). Moreover, the United States Supreme Court has found that double-celling inmates does not constitute cruel and unusual punishment. *See Rhodes v. Chapman*, 452 U.S. 337, 350 (1981).

Conclusion

Accordingly, the Complaint is **dismissed**.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

January 5, 2011
Charleston, South Carolina